IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3291 of 2002
with
SPECIAL CIVIL APPLICATION No 12175 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURYAPUR CO-OPERATIVE BANK LTD.
Versus
JAGUBHAI C. PARMAR

Appearance:
1. Special Civil Application No. 3291 of 2002
MR MIHIR H JOSHI for Petitioner No. 1
MR JM HOSHANG for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 21/09/2004

COMMON ORAL JUDGEMENT

This Court has already issued rule in SCA No.3291 of 2002 and Mr.J.M.Hoshang, Learned Advocate appears for

the respondent no.1. So far as SCA No. 12175 of 2003 is concerned, Rule. Mr.J.M.Hoshang, Learned Advocate appears for the respondent no.1. With the consent of parties, both the aforesaid Special Civil Applications are taken up for final hearing today and as common question of fact and law arises, both the present petitions are decided and disposed of by this common order.

2. So far as SCA No.3291 of 2002 is concerned, the petitioner-original plaintiff Suryapur Cooperative Bank Ltd. has challenged the legality and validity of the order passed by the Gujarat State Cooperative Tribunal passed in Revision Application No.481/01, 488/01 and 489/01 dated 16.2.2002 by which the Tribunal has dismissed Revision Application No.485 of 2001 and modified the order passed by the Board of Nominees, Surat passed below Exh.109 in Lavad Suit No.641 of 2000 by directing the Board of Nominees to collect the alleged forged original documents and to collect the admitted documents signed by the defendant no.1 and send it to the Government handwriting expert for getting his opinion within a month.

So far as SCA No. 12175 of 2003 is concerned, the petitioner - Suryapur Cooperative Bank Ltd. has challenged the legality and validity of the order passed by the Board of Nominees, Surat dated 25.6.2002 below Exh.139 in Lavad Suit No. 641 of 2000 and the order dated 27.3.2003 passed in Revision Application No.247 of 2002 by the Gujarat State Cooperative Tribunal by which the Board of Nominees has directed the petitioner original plaintiff bank to produce the documents which are mentioned in Para 2 of the application below Exh.139 which according to the respondent no.1 - original defendant is required for proper adjudication of the application below Exh.5.

3. The petitioner bank had filed Lavad Suit No.641 of 2000 against the respondent in respect of outstanding dues of Rs.1,10,00,000/-. That alongwith the suit, the petitioner-plaintiff had also moved an application Exh.5 seeking injunction against the disposal of the properties/injunction was granted exparte. It appears from the record that as according to the respondent-original defendant, the documents which were relied upon and which are part of stay application were not given to him and therefore, he moved an application Exh.16 and 17 for supply of necessary documents and to dismiss the stay application. It appears that both the applications came to be dismissed against which the

respondents preferred Revision Application No.305 of 2000 before the Gujarat State Cooperative Tribunal (hereinafter referred to as "the Tribunal") and the Tribunal vide its judgement and order dated 15.3.2001 partly allowed the aforesaid Revision Application No.305 of 2000 and the Board of Nominees was directed to hear the stay application biparte taking evidence from both the sides and calling the original record for reference and decide the matter on merits within a period of one month and the injunction which was granted earlier was directed to be continued till final disposal on the stay application. It appears that the said order dated 15.3.2001 passed by the Tribunal in Revision Application No.305 of 2001 had not been challenged and the said order has become final. It is the allegation on behalf of the petitioner that the respondent - original plaintiff was not interested in seeing that the application Exh.5 is heard and disposed of at the earliest. He moved an application before Exh.109 for getting the documents examined by a handwriting expert before proceeding further with the stay application so that he can file a detailed reply and a proper opportunity is given to him to defend the application below Exh.5. The said application Exh.109 came to be allowed by the Board of Nominees and passed an order directing the defendant to keep the handwriting expert present at the place of the bank and to get the opinion. Being aggrieved and dissatisfied with the said order below Exh.109, the petitioner preferred Revision Application No.485 of 2001. It appears that the respondent - original defendant was also aggrieved with some of the directions passed below Exh.109. He had preferred Revision Application No.488 and 489 of 2001 and the Tribunal vide its judgment and order dated 16.3.2002 dismissed the revision application preferred by the petitioner being Revision Application No.485 of 2001 and partly allowed the Revision Application No.488 and 489 of 2001 and modified the order passed below Exh.109 to the extent that the Board of Nominees is directed to call for the alleged forged documents and to collect the admitted documents signed by the defendant no.1 and send it to the Government handwriting expert for getting his opinion. As stated hereinabove, being aggrieved and dissatisfied with the said order dated 16.12.2001 passed by the Tribunal in aforesaid 3 revision applications, the petitioner had preferred SCA No.3291 of 2002 and this Court while admitting the present petition granted stay of further implementation and operation of the order passed by the Tribunal dated 16.2.2002 passed in aforesaid three revision applications.

In the meantime, one another application also came to be filed by the respondent-original defendant below Exh.139 directing the petitioner bank to produce certain documents which are not in any way connected with the documents which were required to be sent to the handwriting expert and which was not in any way connected with the order passed below Exh.109 and it was also requested to send the documents to the handwriting experts. The Board of Nominees rejected the prayer of the respondent - original defendant qua sending the documents to the handwriting expert, however, passed an order of producing certain documents which are mentioned in Part II of the application below Exh.139 which are not in any way connected with the application below Exh.109 and not connected with the documents which were required to be sent for handwriting expert/opinion.

4. Being aggrieved and dissatisfied with the order passed below Exh.139, the petitioner bank preferred Revision Application No.27 of 2002 before the Tribunal and the Tribunal rejected the said revision application confirming the order passed by the Board of Nominees below Exh.139 which is challenged by way of SCA No.12175 of 2003.

5. Shri Vimal Patel, Learned Advocate appearing on behalf of the petitioner bank had vehemently submitted that the respondent - original defendant is filing one after another applications with a view to see that the application below Exh.5 is not heard, decided and disposed of. He has further submitted that so far as the documents and the handwriting expert's opinion is concerned, for the same, proper stage has not come and only at the time of recording the evidence, the said documents can be proved and therefore, requested to quash and set aside the order passed by the Board of Nominees below Exh.109 as well as application below Exh.139 as well as the order passed by the Tribunal in revision application confirming the aforesaid orders passed below Exh.109 and 139.

6. Shri J.M.Hoshang, Learned Advocate for the respondents has submitted that the allegation of the petitioner that the respondent is filing application one after another for not deciding the application below Exh.5 is not correct. He has further submitted that in fact, he has no objection in continuing the interim order/injunction passed below Exh.5 till the final disposal of the suit and has submitted that let the order exparte injunction granted by the Board of Nominees passed below Exh.5, he made absolute till the final

disposal of the suit. However, he has submitted that so far as the documents which are required to be sent for the purpose of handwriting expert's opinion, in view of the fact that according to him, he has not taken the loan and the alleged signatures are forged one and to know the real truth, the documents are required to be sent to the Government approved handwriting expert to get his opinion so that the truth may come out and the suit may be proceeded further in accordance with law.

7. Heard the Learned Advocate appearing on behalf of the parties.

8. In view of the statement made on behalf of the respondent - original defendant that let the adinterim injunction granted by the Board of Nominees passed below Exh.5 i.e. stay application in Lavad Suit No. 641 of 2000 be confirmed till the final disposal of the suit, the apprehension on the part of the petitioner bank that the respondent - original defendant wants to delay the hearing of the application below Exh.5 is not now well founded. In view of the aforesaid categorical statement made on behalf of the respondent no.1 - original defendant, the adinterim injunction granted by the Board of Nominees passed in Lavad Suit No.641 of 2000 below Exh.5 is hereby made absolute and the injunction granted by the Board of Nominees in Lavad Suit No.641 of 2000 is directed to be continued till final disposal of Lavad Suit No.641 of 2000. The Board of Nominees, Surat is directed to pass consequential order to that effect in the aforesaid suit No.641 of 2000.

9. In view of the aforesaid fact, now the directions issued by the Board of Nominees below Exh.109 and 139 in so far as the production of the documents and sending it to the Government authorised handwriting expert for getting his opinion before application Exh.5 is decided will not survive as now the application below Exh.5 is not required to be heard in view of the concession given by the Learned advocate appearing on behalf of the respondent - original defendant to continue the exparte adinterim injunction granted below Exh.5 till the final disposal of the suit.

10. Now, the question remains with regard to sending the documents to the Government authorised handwriting expert. It is true that the same can be done at the time of recording of the evidence and those documents which require to be proved by the bank at an appropriate stage. Still, the Tribunal has held that to know the correct position and to know the truth if the documents are sent

to the Government approved handwriting expert for its opinion, there is nothing illegal. No prejudice is likely to be caused to the petitioner as well as to the respondent. Under the circumstances, it is directed that the Board of Nominees, Surat is directed to get the opinion of the Government approved handwriting expert with regard to the signatures of the defendant in the documents which are relied upon by the petitioner original plaintiff after getting the admitted signature of the respondent - original defendant and getting the zerox copies of the original documents produced and relied upon by the petitioner-original plaintiff bank and to see to it that the said documents are kept in safe custody and thereafter to get the opinion of the Government approved handwriting expert. Rule is made absolute to the aforesaid extent and the aforesaid two petitions are disposed of accordingly with no order as to costs.

(M.R.Shah, J)
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